No. 78-1789

In the Supreme Court of the United States

OCTOBER TERM, 1979

ARKANSAS LOUISIANA GAS CO., PETITIONER

v.

FRANK J. HALL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES AND THE FEDERAL ENERGY REGULATORY COMMISSION AS AMICI CURIAE

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This brief is filed in response to the Court's invitation of October 1, 1979, on behalf of the United States and the Federal Energy Regulatory Commission.[1]

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[1] Under Section 402(a)(1)(C), (D), (E), and (F) of the Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 583, to be codified at 42 U.S.C. 7172(a)(1)(C), (D), (E), and (F), this agency has succeeded to the relevant functions and responsibilities of the former Federal Power Com-

QUESTION PRESENTED

Whether, in an action for breach of a gas purchase contract subject to the Natural Gas Act, the Supreme Court of Louisiana violated the filed rate doctrine as set forth in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951), in holding that respondents are entitled to damages in excess of rates on file with the Commission prior to the time that respondents achieved small producer status.

STATUTE AND REGULATIONS INVOLVED

Section 4 of the Natural Gas Act, 15 U.S.C. 717c and regulations thereunder, 18 C.F.R. 154.92-154.95, 157.40, are set forth at 78-986 Pet. App. 48a-50a, 52a-60a.

STATEMENT

The facts of this case are more fully set forth in our response to a related petition, *Arkansas Louisiana Gas Co.* v. *Hall*, cert. denied, No. 78-986 (Oct. 1, 1979) (78-986 Amici Br. at 2-10). To briefly summarize, in 1952 respondents, producers of natural gas, entered into a contract to sell gas to petitioner Arkansas Louisiana Gas Company ("Arkla"). The contract set forth a schedule of fixed prices, including increases in specific amounts to be

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mission with respect to the certification and regulation of sales of natural gas in interstate commerce under the Natural Gas Act, 15 U.S.C. 717-717w. The term "Commission" herein refers to the Federal Power Commission or the Federal Energy Regulatory Commission as the context indicates.

effective every five years up to an agreed maximum. The contract also contained a further price escalation provision, known as a "favored nations clause," under which respondents were entitled to further price increases if Arkla purchased gas from another party from the same field at a higher price. After 1954, respondents obtained a certificate from the Commission to sell the gas under the contract, and filed the contract and each of the scheduled increases in the fixed price with the Commission.

In 1974 respondents sued Arkla in a Louisiana state court for breach of contract; they claimed that certain leases obtained by Arkla from the United States in 1961, and Arkla's lease payments thereunder, had triggered respondents' rights to higher prices under the favored nations clause.

Arkla denied the claims. It also moved the state court to dismiss the action on primary jurisdiction grounds and petitioned the Commission for a declaration that its lease payments had not triggered the favored nations clause. After several decisions and a remand from the United States Court of Appeals for the District of Columbia Circuit, the Commission ultimately denied Arkla's petition on May 18, 1979 (App., *infra*, 1a-15a). The Commission held that under the circumstances of this case, it would decline to exercise primary jurisdiction in respect of what it viewed as essentially a dispute over contract issues that do not require the Commission's expertise or implicate policies under the Natural Gas Act (*id.* at 7a-13a). It concluded that those were matters that could

and should be resolved by the state courts, but it also expressed the view that it would be contrary to the Natural Gas Act and the filed rate doctrine for state courts to award respondents damages for the period prior to 1972, when respondents acquired small producer status and were thus relieved of an obligation to file their rates with the Commission (*id.* at 12a n.18). In other words, the Commission concluded that, prior to 1972, the amounts to which respondents were lawfully entitled were limited to the specific rates on file with the Commission and they could thus not be awarded any additional amount for that period based on an alleged breach of contract.

In the meantime, the state courts adjudicated respondents' contract action. The state trial court held that Arkla's payments to the United States after 1961 had triggered the favored nations clause, but it also held that under the filed rate doctrine, respondents could obtain damages only for the period after 1972. The Louisiana court of appeal affirmed both aspects of the trial court's holding. The Supreme Court of Louisiana denied Arkla's application for a writ to review the court of appeal's decision. Arkla then filed a petition in this Court for a writ of certiorari to review the decision of the Louisiana court of appeal. *Arkansas Louisiana Gas Co.* v. *Hall*, No. 78-986. In response to the Court's invitation, we filed a brief expressing our view that the court of appeal's decision was correct and that the petition should be

denied.[2] This court denied the petition on October 1, 1979.

After the decision of the court of appeal, the Supreme Court of Louisiana, although denying Arkla's petition for review, granted respondents' petition for review and reversed that part of the court of appeal's decision limiting respondents' recovery to the period after 1972. The Supreme Court of Louisiana concluded that Arkla had prevented respondents from making appropriate filings with the Commission before 1972 by not informing respondents of its lease payments; that the Commission would have approved respondents' filings for an increase; and that respondents should therefore be allowed to recover damages for the entire period between Septembr 1961 through December 31, 1975. The instant petition seeks this Court's review of that decision.

On May 24, 1979, respondents filed with the Commission an application for a waiver of the Commission's filing requirements, presumably on the assumption that if the Commission granted such a waiver, the filed rate doctrine would not bar their recovery of damages for the period prior to 1972. The Commission has not yet acted on that application.

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[2] We noted, however (Amici Br. at 10, 17, n.13), that Arkla had subsequently filed a petition for a writ of certiorari (*i.e.*, the instant petition) to review a later decision of the Supreme Court of Louisiana reversing, on respondents' petition, that part of the court of appeal's decision limiting their recovery of damages to the period after 1972; and we suggested that this Court might wish to defer consideration of the petition in No. 78-986 until it considered the instant petition.

DISCUSSION

As we stated in our Brief as Amici Curiae in No. 78-986 (at 15-17), we believe the Supreme Court of Louisiana erred in holding that respondents are entitled to damages from petitioners for the period from 1961 to 1972. This holding, we believe, is contrary to a basic and well established principle of rate regulation known as the filed rate doctrine, under which a person "can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." *Montana-Dakota Utilities Co.* v. *Public Service Co.*, 341 U.S. 246, 251 (1951). See also *Lowden* v. *Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516, 520 (1939); *Farley Terminal Co.* v. *Atchison, T. & S.F. Ry.*, 522 F.2d 1095, 1098 (9th Cir., cert. denied, 423 U.S. 996 (1975)). This principle precludes an award of damages that would have the effect of giving respondents a higher price for their gas than the tariff on file with the Commission during the period that respondents were required to file tariffs with the Commission. The filed rate doctrine is based on the statutory objective of establishing a uniform system of rates within the exclusive control of the federal agency; indeed this court in *Montana-Dakota* applied the doctrine notwithstanding claims that the filed rates claimed to be unreasonably low were the product of fraud.

CONCLUSION

Because the filed rate doctrine is an important principle of federal rate regulation, we normally would urge the Court to grant the petition for a writ of certiorari and reverse the judgment of the Supreme Court of Louisiana. However, if the Commission should grant the pending application for waiver of the filing requirement, the issue may well be moot. In the circumstances, the Court may wish to hold the petition to await the Commission's action.

Respectfully submitted.

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FEBRUARY 1980

APPENDIX

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

Primary Jurisdiction

Before Commissioners: Charles B. Curtis, Chairman; Don S. Smith, Matthew Holden, Jr., and George R. Hall.

Docket No. RI76-28

ARKANSAS LOUISIANA GAS COMPANY

v.

FRANK F. HALL, ET AL.

ORDER DECLINING JURISDICTION AFTER RECONSIDERATION OF THE ISSUE ON REMAND

(Issued May 18, 1979)

I

A QUESTION OF JURISDICTION

In this case this Commission [1] is faced with a question of jurisdiction. Should this Commission exercise jurisdiction to the exclusion of state courts to de-

[1] These proceedings were commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), they were transfered to the FERC. The term "Commission," when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, to the FERC.

termine whether a royalty agreement between a gas utility and the United States is a "purchase [of gas] from another party-seller" that triggers an automatic price increase under the "most favored nation clause" in a gas supply contract between the utility and certain independent producers of gas? [2]

II

HISTORY OF PROCEEDINGS

A. *The Parties*

Frank J. Hall *et al.* are a group of independent producers of natural gas. Under a 1952 contract with the Arkansas-Louisiana Gas Company ("Arkla"), if Arkla purchases gas from any other producer in the same gas field at a higher price for gas than it pays the Hall group under the contract, Arkla must pay the Hall group that higher price. This contractual provision, known as a most favored nation clause, provides:

> If at any time during the term of this agreement buyer should purchase from another party-seller gas produced from the subject wells or any other well or wells located in the Sligo gas field at a higher price than is provided to be paid for

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[2] ***Arkansas Louisiana Gas Company* v. *Frank J. Hall, et al.*, Docket No. RI76-28, Order Setting Matter for Determination on Brief, August 9, 1978. This is not the first time we are facing this case. The FPC first addressed the jurisdiction question in an order dated March 8, 1976. The FPC's previous actions in this case are discussed more fully in Section II, *infra*, pp. 4-5.**

> gas delivered under this agreement, then in such event the price to be paid for gas thereafter delivered hereunder shall be increased by an amount equal to the differences between the price provisions hereof and the concurrently effective higher price provisions of such subsequent contract.

B. *The State Court Proceedings*

In 1974, the Hall group sued Arkla for breach of contract in a Louisiana State court[3] claiming that royalty payments made to the United States by Arkla since 1961 under a gas supply arrangement with the government had triggered the most favored nation clause. The Hall group claimed that they were entitled to damages retroactive to 1961.

In October 1977, the state court found for the Hall group and awarded substantial damages.

On appeal, the Court of Appeals of Louisiana, Second Circuit,[4] held that: (1) The trial court had proper subject matter jurisdiction. Jurisdiction was not exclusive in the FERC under the Natural Gas Act. And the FERC does not have primary jurisdiction to determine whether the favored nation clause was activated by the royalty payment to the United States. (2) The favored nation clause was activated by the royalty payment because the royalty payment was tantamount to a "purchase from another party

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[3] *Hall* v. *Arkansas-Louisiana Gas Company*, 1st Judicial District Court, Caddo County, Louisiana, No. 225,699.

[4] *Hall* v. *Arkansas-Louisiana Gas Company*, 359 So.2d 255 (May 1, 1978).

seller." [5] The court remanded the case to the trial court for recalculation of damages. Arkla petitioned the Supreme Court of Louisiana for certiorari. The Supreme Court of Louisiana denied the petition.[6] Arkla has petitioned the Supreme Court of the United States for certiorari.

C. *Action Before the FPC*

After the Hall group first filed suit in state court, Arkla applied to the FPC for a declaratory order

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[5] The Court so found despite its recognition that the theory of ownership advanced by Arkla was:

> . . . in accord with the prevailing state law and federal decisions on this issue. See *Shell Petroleum Corp.* v. *Calcasieu Real Estate & O. Co.*, 185 La. 751, 170 So. 785 (1936); *Logan* v. *State Gravel Co.*, 158 La. 105, 103 So. 526 (1925); *Board of Com'rs. of Caddo Levee Dist.* v. *Pure Oil Co.*, 167 La. 801, 120 So. 373 (1929); *Melancon* v. *Texas Company*, 230 La. 593, 89 So.2d 135 (1956). *Mobil Oil Corporation* v. *Federal Power Commission*, 149 U.S.App.D.C. 310, 453 F.2d 256 (1971), *cert. den.* 406 U.S. 976, 92 S.Ct. 2413, 32 L.Ed.2d 676 (1972).

The Court concluded that the intentions of the parties were not to limit the activiation of the favored nation clause only to situations where there was a technical "purchase," "seller," or "price." The Court decided that royalty payments were within the intentions of the parties when they drafted the favored nation clause.

[6] A related petition for certiorari was also filed by the Hall group. The Hall group petition was granted for the limited purpose of considering the level of damages and whether one member of the group had waived his right to damages. The Louisiana Supreme Court on March 5, 1979, issued its decision on those matters. It has awarded damages for the period 1961 to 1972 which the Court of Appeals had rejected.

construing the favored nation clause contained in its contract with the Hall group.

Before the FPC, Arkla argued that the FPC had exclusive jurisdiction over the dispute. The FPC[7] held:

> There is no question that sales of natural gas by [the Hall group] to Arkla are subject to the jurisdiction of the Commission.
>
> * * *
>
> However, there is a threshhold question as to the contractual basis of [the] rates. It has been Commission policy to defer action on contract questions presented to it involving jurisdictional sales which are pending in court * * *. This case presents a question of concurrent jurisdiction * * * While this Commission has jurisdiction to decide the subject contract question, the Louisiana court also has jurisdiction over an action based upon asserted breach of contract. Accordingly, we believe it appropriate to defer to the Court to decide these contract questions.

On Arkla's application for rehearing, the FPC ruled[8] that even if the state court held that the Hall group was entitled to a higher rate under the favored nation clause, they, as jurisdictional sellers, would still be limited to ceiling rates in effect under the

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[7] *ArkansasLouisiana Gas Company* v. *Frank J. Hall, et al.*, Docket No. RI76-28, Order Denying Petition (March 8, 1976).

[8] *Arkansas-Louisiana Gas Company* v. *Frank J. Hall, et al.*, Docket No. RI76-28, Order Denying Application for Rehearing (issue June 4, 1976). In these proceedings, the FPC issued other orders which are not relevant at this time.

Commission's regulations. The FPC also noted that since the producers held a small producer certificate effective October 19, 1972, they were not required to make any rate increase filings thereafter.

On February 3, 1977, Arkla petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the FPC's orders.

D. *Actions By The FERC*

On March 21, 1978, the FERC moved in the U.S. Court of Appeals for an order remanding the record in these proceedings to the FERC for further consideration.

On May 25, 1978, the Court of Appeals granted the Commission's motion and remanded the record to the Commission.

On August 9, 1978,[9] the Commission asked for briefs directed towards the question of

> "whether this Commission has primary jurisdiction over these matters, and if so, whether this Commission should exercise such jurisdiction in the circumstances presented here."

The Commission noted that the briefs should not discuss the merits of the case but should limit the discussion to the jurisdictional issues.

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[9] *Arkansas-Louisiana Gas Company* v. *Frank J. Hall, et al.*, Docket No. RI76-28, Order Setting Matter for Determination on Brief.

IV.

DISCUSSION

As noted above, the FPC declined to issue a declaratory order construing the most favored nation clause in the Arkla-Hall contract. It held that there was concurrent jurisdiction with the state court and that it would defer to that court.

The FPC stated that there is a "[c]ommission policy to defer action on contract questions presented to it involving jurisdictional sales which are pending in state court." [10]

While we concur in the result reached by the FPC, we do not subscribe to its rationale. Whether the Commission should assert jurisdiction over contractual issues otherwise litigable in state courts, depends, we think, on three factors. Those factors are: (1) whether the Commission possesses some special expertise which makes the case peculiarly appropriate for Commission decision; (2) whether there is a need for uniformity of interpretation of the type of question raised by the dispute; and, (3) whether the case is important in relation to the regulatory responsibilities of the Commission. We believe the FPC's automatic policy of deferral of contract questions pending in state courts to the state courts was erroneous.

In examining whether this Commission has a special expertise which makes it the appropriate forum

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[10] Order Denying Petition (March 8, 1976), p. 3.

to decide whether the Arkla-Hall favored nation clause has been triggered, we note initially that the Commission is, in general, no more expert than a court in deciding non-technical contract questions. However, interpretation of some types of contractual clauses may involve examination of technical issues which are within this Commission's special expertise. Determination of the dispute between Arkla and the Hall group depends upon finding that Arkla has "purchase[d] from another party-seller gas produced from the subject wells or any other wells located in the Silgo gas field at a higher price than is provided to be paid for gas delivered under this agreement." While there are circumstances where the interpretation of a favored nation clause may involve this Commission's technical expertise,[11] we have been presented with no issue in this case involving our special expertise. Arkla makes no argument in this case that would involve our technical expertise. Arkla's defense to the contract action is that the royalty agreement between itself and the United States is not a "purchase from another party-seller" which triggered the favored nation clause. The outcome of the case appears to turn on interpretation of the intent of the parties to the contract rather than any determination

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[11] See *Pure Oil Company* v. *F.P.C.*, 299 F.2d 370 (Cir., 1962). In that case the interpretation of a favored nation clause involved the issue of whether certain purchased gas possessed exceptional qualities for peaking purposes which enhanced its value to the extent that a seemingly triggering price was not higher on a comparative basis than the prices paid under the contract.

requiring special technical expertise. We therefore see no reason to exercise our jurisdiction based upon a finding that the case involves a matter within our special expertise.

We next consider whether this case is one in which there is an issue which requires uniform interpretation. We consider the need for uniformity in light of the policies Congress has charged this Commission to administer. In this regard we must consider that transactions subject to the Natural Gas Act rest in large part on private contracts and that the Commission's role with respect to such contracts should intrude no further into doctrines of state contract law than necessary to carry out the responsibilities under the Natural Gas Act.[12] While this "Commission has plenary authority to limit or proscribe contractual arrangements that contravene the relevant public interests," [13] and to this end in appropriate cases, might find that achievement of the purposes of the Natural Gas Act requires that certain terms in contracts should be uniformly interpreted, we do not believe this to be such a case.

In this case this Commission is being asked to interpret a favored nation clause. The dispute is whether under the contract a royalty agreement is a "purchase [of gas] from another party-seller" that

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[12] See *United Gas Co.* v. *Mobile Gas Corp.*, 350 U.S. 332, 343-344 (1956); *United Gas Co.* v. *Memphis Gas Div.*, 358 U.S. 103, 109-110, 112-114 (1958).

[13] *Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968).

triggers an automatic price increase under the favored nation clause. In the circumstances of this case whether a "purchase" occurred within the meaning of the contract depends upon what type of transactions the parties to the contract intended "purchase" to include.[14] What "purchase from another party-seller" means in one gas supply contract does not necessarily mean the same thing in another gas supply contract. The makers of one contract may have intended the favored nation clause to be triggered by events other than those intended to trigger the clause in another contract. Since the meaning of a favored nation clause depends upon the intentions of the parties to the contract, we see no need for uniform interpretation of all favored nation clauses. Indeed, uniform interpretation would seem to be impossible.

It has been argued that the interpretation of this contract may have involved a state court in determining whether a "sale" had occurred. And the interpretation of the word "sale", it was argued, would involve a state court in the interpretation of an important term defining this Commission's jurisdiction over gas.[15] But this case does not involve determining jurisdiction over gas. We undisputedly have jurisdiction over the gas involved in this case.

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[14] The Louisiana court properly looked to the intentions of the parties to the contract in determining the meaning of the contract. See n.2, p. 3.

[15] This Commission's jurisdiction extends to "the *sale* of natural gas in interstate commerce for resale." Section 1(b) of the Natural Gas Act, 52 Stat. 821, 15 U.S.C. 717(b).

This case involves contract interpretation. And it is clear that the word "sale" may have a different meaning in a contract than it does under that section of the Natural Gas Act conferring jurisdiction upon this Commission. "The same words, in different settings, may not mean the same thing." [16]

Finally, in considering the need for uniformity, we look at the fact that the contracts between Arkla and the Hall group were entered into long before this Commission became actively concerned with the indefinite price escalator clauses and more particularly with favored nation clauses. The contract in question was entered into in 1952. Not until 1961 did the FPC issue regulations concerning most favored nation clauses.[17] Indeed, in contracts executed after April 3, 1961, most favored nation clauses are prohibited. Since these contracts were entered into before the FPC issued regulations concerning favored nation clauses, the makers had no guidance from the Commission in drafting the clauses. Since at the time, no Commission policy existed requiring uniformity, the meaning of the clauses was left to the intentions of the parties. Ascertainment of such intentions is a matter of case-by-case adjudication that does not invoke the considerations of uniformity or technical expertise that would, in other circumstances, support assertion of this Commission's primary jurisdiction.

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[16] *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 678 (1950).

[17] 18 C.F.R. 154.93.

Finally, we must decide now what impact this case has on our regulatory responsibilities. This type of case, involving small producers not required by regulation under the Natural Gas Act to file for rate increases authorized by contract,[18] is not a matter of

[18] The Hall Group holds small producer certificates which exempt it from certain rate filing requirements. See 18 C.F.R. 157.40. But for this status, the group would have been required, under the filed rate doctrine, to apply for and receive approval of any change in its rates on file with this Commission before it could collect any price increase claimed to have been triggered under the favored-nation clause. *Montana Dakota Utilities Co.* v. *Northwestern Public Service Co,* 341 U.S. 246, 251 (1951). Moreover, whether the group held small or large producer status, such increases could have been recovered only prospectively. *Id.* However, because a small producer is exempt from rate filing requirements and could commence collection of contractually authorized rates on demand to the buyer, a court would be capable of finding an award of damages for the difference between a rate permitted by the contract, *up to applicable limits provided by the Commission* for small producers, and amounts actually collected.

Prior to 1972 the Hall group did not hold small producer certificates. In the "Order Denying Application for Rehearing" issued June 4, 1976, the FPC stated on p. 2, n. 1:

> Prior to the filing of their small producer application, respondents, of course, as ARKLA contends, would be entitled under the Natural Gas Act only to the rate on file with this Commission and in effect. See *Samedan Oil Corp., et al.*, 37 FPC 207, and cases cited therein.

The FPC held that the producers were not entitled to a rate increase for the period prior to when they held small producer certificates since they had not filed for a rate increase as required by Commission regulation. The Louisiana Supreme Court, however, has awarded damages back to 1961. It concluded that it was Arkla's fault that the Hall group has not filed for a rate increase prior to 1972. The Louisiana

great import to our regulatory responsibility as we find no need for a uniform interpretation of a contractual provision, and find that the rates requested are within what the Commission has determined to be the zone of reasonableness.

On the facts of this case, the damages do not exceed applicable area ceiling rates.[19] The Louisiana

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Court therefore deemed that the Hall group had fulfilled its obligation to file new rate schedules. On this basis the Louisiana Supreme Court awarded damages for the 1961 to 1972 period after the favored nation clause was found to have been triggered and before the Hall group received small producer certificates.

It is our opinion that the Louisiana Supreme Court's award of damages for the 1961-1972 period violates the filed rate doctrine. *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951). This Commission, however, does not have the power to review what the state court has done. We note, however, that a petition for a writ of *certiorari* has been filed in the Supreme Court of the United States seeking review of the Louisiana Supreme Court's decision. *Arkla* v. *Hall*, Sup. Ct. No. 78-986, filed December 18, 1978.

[19] On April 25, 1979, we issued an "Order Requesting Additional Information to Supplement Record." Information received pursuant to that request confirms that damages do not exceed applicable area ceiling rates. Arkla contends that damages do exceed the applicable area ceiling rates. Arkla claims that the Louisiana courts erroneously awarded damages for liquefiable hydrocarbons. In this Commission's November 8, 1976, "Order Clarifying and Amplifying Commission Order Denying Rehearing" we stated:

> While the Commission has jurisdiction over natural gas containing liquefiable hydrocarbons, it has no jurisdiction over liquids after their removal from the gas stream. Consequently, if a contract provides for severable payments for the natural gas, including the liquefiable hydro-

Supreme Court concluded that the Hall group was entitled to damages measured by the difference between the price Arkla paid the United States under the royalty agreement and the price it paid the Hall group.[20] In so doing, it noted that it considered the fact that the Commission, in previous orders in this case, had stated the maximum rates to which the Hall group would have been entitled if contractually authorized and if proper filing procedures had been followed.[21] The Supreme Court of Louisiana further stated:

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carbons contained therein, and the subsequently removed liquids, we would have jurisdiction over the sale of the natural gas containing the liquefiable hydrocarbons, but no jurisdiction over the sale of the liquids. But, there is a basic contract question presented with respect to the subject sale as to whether respondents are entitled under the sales contract to a price for the products removed by ARKLA from the natural gas purchased from respondents which is severable from the price for natural gas sold under such contract.

The Louisiana courts found that the contract provided for a price for the products removed from the gas severable from the price for the gas sold under the contract. The damages awarded for the actual natural gas, not including the severable payment for the products removed, was within the area ceiling rate.

[20] As we stated above, the Louisiana Supreme Court, in effect, waived one of this Commission's filing requirements when it determined that the Hall group was entitled to damages back to 1961. This holding of the Louisiana Supreme Court conflicts with the filed rate doctrine.

[21] *Frank J. Hall* v. *Arkansas Louisiana Gas Company*, Supreme Court of Louisiana (March 5, 1979), slip op. p. 11. The Commission's previous orders were its *Order Denying Appli-*

> We note that plaintiffs make no claim that they would have been entitled to a price increase under their contract in excess of the respective area base rate ceilings for sales of natural gas as established by order of the Commission.[22]

In light of the fact that the Hall group makes no claim for damages higher than the applicable area ceiling rates, that the Louisiana Supreme Court did not authorize rates higher than the applicable area ceiling rates, and that the state district court on remand from the Louisiana Supreme Court will presumably not award damages higher than the area ceiling rates, we do not feel that our regulatory responsibilities are so affected that we must exercise our jurisdiction in this case.

Since we find that we need not exercise jurisdiction under any of the three applicable factors, we decline jurisdiction.

The Commission orders:

Upon review on remand, we decline to exercise jurisdiction on this matter for the reasons stated above.

By the Commission.

[SEAL] Kenneth F. Plumb,
Secretary.

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cation For Rehearing, (June 4, 1976); and *Order Clarifying And Amplifying Commission Order Denying Application For Rehearing* (November 8, 1976).

[22] Supreme Court of Louisiana, slip op. p. 12, n.7.

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